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THE INTERIM

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The Monthly Report of Legislative Activity



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PAYMENT OF AND REPORTING OF LEGISLATOR EXPENSE PAYMENTS

The January issue of The Interim reported that beginning Jan. 1 a legislator's expense payment would be required to be made through the state payroll system rather than as a separate warrant on a claim. Because of a potential delay in the payment of some claims, the Legislative Council considered the issue at its January meeting. A representative of the state payroll system explained the program and indicated that the requirement would be removed. The requirement was formally rescinded in February. A committee is continuing to meet with representatives of the state payroll department to finally resolve questions surrounding the issue. The Legislative Council staff is represented on the committee to assist in providing the legislative perspective on the issue.

The fundamental problem is how to meet federal government requirements to report and withhold taxes on certain expense payments. The internal revenue code has been amended extensively in recent years, and the IRS regulations have not kept up with the changes. Special provisions governing legislators add to the confusion. Currently, the committee is reviewing the various categories of payments that may be subject to withholding and reporting. It is likely that at least payments subject to reporting and withholding will ultimately be required to be made on the payroll system. Meanwhile, different committees may adopt different policies regarding these payments. A member who prefers to receive travel payments on a separate warrant should discuss the matter with the agency from which the payment is made.

PLEASE RETURN

JOINT INTERIM SUBCOMMITTEE ON MARKETING OF MOTOR FUELS

Legislators Appointed... Members appointed to serve on the Joint Interim Subcommittee on Marketing of Motor Fuels are Senators Esther Bengtson, John Anderson, Hubert Abrams, and Jerry Noble, and Representatives Norm Wallin, John Phillips, Ervin Davis, and Tom Kilpatrick. The organizational meeting is set for Tuesday, March 27, when plans will be completed for the study requested by HJR 12 of the 1989 regular session.

INTERIM SUBCOMMITTEE ON ADMINISTRATION OF THE JOB TRAINING PARTNERSHIP ACT

Members Appointed... The Speaker of the House and the President of the Senate have appointed members of a new interim committee on administration of the Job Training Partnership Act (JTPA). They are Sens. Gary Aklestad, Esther Bengtson, John Harp, and Bob Williams, and Reps. Jerry Driscoll, Budd Gould, Jerry Nisbet, and Clyde Smith. The committee was formed in accordance with House Bill No. 529, introduced by Rep. Bill Boharski, which requires establishment of a committee to review and comment on proposed plans for administration of \$12 million per year in job training funds under the federal Job Training Partnership Act. Plans are being made for the committee to meet in March. Tom Gomez, Legislative Council Researcher, is lead staffer. Questions about the committee should be directed to him at the Legislative Council.

JOINT INTERIM SUBCOMMITTEE ON ADULT AND JUVENILE DETENTION

Choteau, Great Falls Meetings Planned... The Joint Interim Subcommittee on Adult and Juvenile Detention will hold public meetings on Montana jail and detention issues Thursday and Friday, March 8 and 9, in Choteau and Great Falls. The dates, time, and location for these meetings are:

March 8, 1 p.m., Choteau Public Library, 17 N. Main.

March 8, 7:30 p.m., Civic Center Gallery Room, Park Drive and Central Avenue, Great Falls.

March 9, 9 a.m., Civic Center Gallery Room, Great Falls.

Jail Tours Planned...Included on the agenda is a tour of the Teton County and Cascade County jails. In addition, in Choteau on March 8, the Subcommittee will hold a hearing on rural jail and detention issues.

Findings of Statewide Jail Survey...On March 9 in Great Falls, the Subcommittee will also hear the results of a statewide jail survey which was conducted by the Subcommittee in January. The survey was sent to all 56 counties and to five cities that operate municipal jail facilities. The purpose of the survey is to collect data on the current status of municipal and county detention in Montana, as required by Senate Joint Resolution No. 23, which directs the Subcommittee to conduct an interim study on detention. Information collected from the survey will be used by the Subcommittee to determine current jail and detention problems in Montana. In addition, the survey results will be used to assess the future need for adult and juvenile detention services in the state.

Additional Topics...Other items on the March 9 agenda include reports by the legal staff on the effect of I-105 on the ability of local governments to finance local jails and on the applicability of the Drake Amendment to state laws requiring counties to provide separate facilities for the detention of juveniles.

POSTSECONDARY EDUCATION STUDY COMMITTEE

Third Meeting Held... During its third meeting on Feb. 15 and 16, the Postsecondary Education Study Committee heard reports on enrollment system update, instruction program cost variation, duplication follow-up, and vocational-technical center funding.

Enrollment System Update...A staff report summarized the status of the implementation of the uniform class enrollment system which was initiated by the 1989 biennium Interim University Funding Study Committee and endorsed by the 1989 legislature. This system collects student enrollment information from the university units on a quarterly or semester basis in electronic format. In addition, it collects

class and instructor information which has been available and used by the university units but not made available to the legislature until this system was implemented. Most of the university units have provided the requested information. However, incorrect data format and incompleteness continue to persist in isolated cases. The committee discussed how the system information would best be used.

Instruction Program Cost Variation...A report showed how the university funding formulas (both old and new) address instructional program cost variations. The report also noted that the flexibility of the university units to reallocate funds internally allows the campus to set internal priorities. The need for supertuition funding at MSU and UM was questioned because those units reallocated funds from the instruction program to other budget areas, such as support. The Commissioner of Higher Education noted that the Board of Regents will review its tuition policies this fall. Finally, the report noted that funding the six university units in fiscal 1990 at the average of the peer institutions would have cost an additional \$24.9 million. The report questioned if other factors, currently external to the formula, should be considered when establishing the legislative appropriation, such as tax capacity and effort and the fiscal impact of higher education delivery systems. The committee determined that external factors are adequately addressed in the normal legislative process and the funding formula should include peer comparisons.

Duplication Follow-up Report...Staff from the Office of the Commissioner of Higher Education followed up on a report on program duplication that was presented at the December 1989 meeting. In the earlier report, program duplication in general was categorized into duplication that is necessary, unnecessary but acceptable, and unnecessary and unacceptable. The purpose of the February report was to identify which duplicated programs fit into each category, the justification for duplicated programs, and where the duplicated programs exist. The report noted no unnecessary and unacceptable duplication. Justification for allowing program duplication was based on five criteria: 1) demand, 2) breadth of offerings, 3) mission of institution, 4) access or geographic availability, and 5) unique character of program curriculum.

Vocational Technical Center Funding...A report on potential mechanisms for funding instruction program costs at the five vocational technical centers showed the funding formula in use through fiscal 1989 was rendered obsolete because the state

assumed additional financial responsibilities from the local school districts in the 1991 biennium that were not incorporated in the formula. The report presented a history of appropriations and expenditures at the centers and concluded that differences in cost were due to center specific factors and not to educationally-related differences. The report then presented two potential funding options: incremental funding and an enrollment-driven uniform per student funding formula. The concept of corridor funding, which employs ranges of enrollment rather than specific enrollments for determining the appropriation, was also discussed. The committee deferred action until the next meeting when the second part of the report addressing support, plant and maintenance, and equipment will be presented. The committee also requested that staff present an update on corridor funding at that time.

Next Meeting...The Committee will meet next on May 4 at 9 a.m. in Room 402 of the Capitol.

LEGISLATIVE FINANCE COMMITTEE

April 6 and 7 Meetings Set...The Legislative Finance Committee will meet on Friday and Saturday, April 6 and 7, to hear reports on budget projections and budget development for FY 1992-93, foster care, state parks, federal mineral royalty revenue, workers' compensation issues, and historical state expenditures. The meeting will convene at 8:30 a.m. in Room 104 of the Capitol.

LEGISLATIVE OVERSIGHT COMMITTEE ON SCHOOL FUNDING IMPLEMENTATION

Meeting Postponed Until April 9 ..The co-chairmen of the Legislative Oversight Committee on School Funding Implementation have agreed to change the date of the third meeting of the interim from March 9, to Monday, April 9. The advanced meeting date will allow staff to provide more complete information on the school districts' budget planning for the first year of implementation of House Bill 28 and to present preliminary information school revenues. As noted at the last meeting, the Office of Public Instruction will provide budgeting assistance and revenue estimates to school personnel in

a number of sites around Montana during March.

Agenda Items...In addition to school budgeting plans, the agenda for April 9 will include reports on:

- ¶ the results of the school facility surveys; school transportation data and analysis;
- ¶ an update on OPI rulemaking;
- ¶ an update on property taxation issues of current public interest (HB 703); and
- ¶ a background report on funding distribution and district organization issues.

Staff is committed to providing draft reports well in advance of the meeting.

Room 104 Is Meeting Place...The meeting will begin at 8:30 a.m. in room 104 of the Capitol.

COMMITTEE ON INDIAN AFFAIRS

Reservation Taxation Discussed...The main topic at the meeting of the Committee on Indian Affairs Feb. 15 was taxation in Indian country. A staff report entitled "Taxation on Montana Indian Reservations" was the basis for the discussion.

Professor Margery Brown, University of Montana Law School, discussed state and tribal taxation powers pointing out how the power to levy taxes comes from an Indian tribe's inherent sovereignty and how tribal governments have only recently begun to exercise this power. She then discussed tribal and state taxing authority and the limitations imposed on both. She spoke extensively about the judicial decisions upon which governments must rely for laying the groundwork for jurisdiction for tax purposes on reservations.

Steve Bender and Dave Woodgerd of the Department of Revenue spoke about state taxation on Indian reservations and current litigation in which the department is involved. The state philosophy regarding taxation is that all residents of a reservation, Indians and non-Indians alike, are subject to state taxation unless prohibited by state or federal law. Although the department is involved in litigation, it would prefer some other method for resolving tax issues between the state and tribal governments and recently attended a taxation conference

in Billings sponsored by the Fort Peck Tribal Council. Judy Rippingale, deputy director for tax policy, is on a subcommittee established by that conference seeking possible solutions other than litigation.

In the afternoon, tribal representatives addressed the committee on taxation issues from a tribal perspective. Among those speaking were Don Kittson, Blackfeet tribal attorney, Harold Monteau, Rocky Boy tribal attorney, Ernie Robinson, Northern Cheyenne vice-chairman, John Sun Child, Rocky Boy vice-chairman, and Joe Red Thunder, Fort Peck vice-chairman. Only four of the seven tribal governments in Montana currently levy taxes. However, tribal governments, like other governmental entities, are looking for new sources of revenue. Tribes are concerned that recent court rulings allowing some double taxation on reservations will hurt reservation economic development. Like the state, the tribes prefer to avoid litigation and want a cooperative agreement for collecting and distributing tax revenue.

The committee then heard comments from interested persons and organizations on the issue of taxation. Don Wetzel, Coordinator of Indian Affairs, gave a status report from his office.

Meeting Set April 12...The next meeting is scheduled for Thursday, April 12, in Room 104 of the Capitol, but the date may be moved to April 19. Interested persons and organizations will be notified of any date changes. Further information may be obtained from the staff researcher, at 444-3064.

ENVIRONMENTAL QUALITY COUNCIL

Meeting Scheduled March 9...The Environmental Quality Council will meet Friday, March 9, at 8:30 a.m. in room 108 of the Capitol. The meeting will begin with consideration of several ongoing issues, including interpretation of the Hard-Rock Mining Impact Act and a request by the Stillwater County Commissioners for clarification of portions of the act to ensure the independence of the Hard Rock Mining Impact Board. Other continuing topics include Earth Day, the Montana Cumulative Watershed Effects Cooperative, a pending Attorney General's opinion on the applicability of MEPA to the Board of Investments, and DHES staffing needs to maintain state primacy of environmental programs. The EQC will also consider preliminary plans for the scope of its study of log scaling practices.

Study of Rural Development Issues Asked...Governor Stephens and Rep. Orval Ellison have requested through the Legislative Council that the EQC conduct a study of rural development issues and the adequacy of state laws to regulate large, high density developments such as those experienced by Park County through activities of the Church Universal and Triumphant. The EQC will consider that request at its March 9 meeting.

Solid Waste Management...The EQC will continue its study of solid waste management with discussions of importation and interstate transportation of solid waste. The Solid Waste Management Advisory Council will report on its recommendations regarding the need for revision of the state master plan for management of solid waste.

Ground Water Quality...The EQC will continue its interim study of ground water quality protection and management at its March 9 meeting with a panel discussion and case study on hard rock mining. Panelists will include representatives from the Department of State Lands, Department of Health and Environmental Sciences, large and small mining operators, and environmental groups. Discussion topics will include an overview of hard rock mining regulatory requirements and the role of state agencies in protecting ground water quality, the scope of mining activities that may be a source of ground water contamination, and mine design alternatives and other measures that can prevent ground water problems. A major objective of this discussion is to determine whether the state's current approach to hard rock mining regulation is effectively preventing ground water contamination and whether any additional or different governmental role is warranted.

Task Force to Meet March 15...The EQC's Ground Water Data Task Force met Jan. 31 and has scheduled another meeting for March 15. The task force is currently drafting proposals for a baseline ground water monitoring and aquifer assessment program, including a scope of work for the 1991-1992 biennium and a proposed budget. Task force discussions have focused on identifying the types of questions citizens and government agencies have about the ground water resource that cannot be adequately answered by currently available information. The task force is also developing a system for determining which aquifers should receive priority attention. Another important component of the proposed program includes plans for making both existing and new ground water data more accessible.

WATER POLICY COMMITTEE

Federal and State Relations...The Water Policy Committee meeting on Feb. 23 was dominated by issues concerning federal and state water relations. Peter Sly, author of Reserved Water Rights Settlement Manual, discussed various water rights negotiation experiences and strategies from around the western U.S. Sly also discussed new U.S. Supreme Court decisions and their potential impact on the Montana reserved water rights settlement efforts.

Hydropower Licensing...Another major issue dealt with federal and state concerns regarding hydropower licensing. Mohammed Akbar, Federal Energy Regulatory Commission, Washington D.C., gave a detailed account of FERC's role in licensing and relicensing of hydropower projects. Other presentations on the hydropower licensing process were given by industry representatives from Washington Water Power and Montana Power Company; state agencies DNRC, DFWP, DHES; and the Northwest Power Planning Council. The committee benefited when the panelists directly addressed the various problems surrounding the federal and state roles in hydropower issues.

Other Updates...The committee also heard updates on the State Water Plan, specifically the Drought Management and Storage Committees; the Milk and Tongue River Dam projects; water leasing (HB 707); and the Pick Sloan Steering Committee.

June 8 Meeting Set...The next Water Policy Committee meeting is scheduled for June 8. More information regarding the meeting or the above topics, may be obtained from the Environmental Quality Council staff.

COMMITTEE ON STATE EMPLOYEE COMPENSATION

Consultant Heard, Survey Results Presented...Rollie Waters, a compensation consultant of Dallas, TX., who has been retained to develop proposals for addressing compensation issues, presented an overview of his work plan to the Committee on State Employee

Compensation on Feb. 8. After the talk by Waters, staff reported preliminary results from a state employee problem identification survey to which more than 800 people replied for a response rate of over 70 percent. The survey revealed that:

¶ Employees are most satisfied with the state's paid leave provisions. Holidays, annual leave, and sick leave are viewed as somewhat better than similar benefits provided by other major Montana employers.

¶ Employees are also satisfied with their health insurance and retirement plans. These benefits are considered slightly better than similar benefits provided by other major Montana employers.

¶ Employees are most dissatisfied with their direct compensation such as salary, cost of living increases, and increases for experience or longevity. They feel that salaries for experienced state employees lag far behind those offered by other major Montana employers.

¶ Employees consider pay for superior performance to be important.

Also during the afternoon session, several agency heads and personnel officers discussed their concerns with the state compensation system.

Thirty-five Speak at Evening Session... During an evening session held in the Senate Judiciary Committee room, 35 persons out of more than 300 attendees testified on problems with the compensation system.

April 5 Meeting... The Committee's next meeting is scheduled for Thursday, April 5, when compensation problems and issues will be further explored.

REVENUE OVERSIGHT COMMITTEE

Forest Taxation Subcommittee Appointed... On Feb. 9, the Revenue Oversight Committee heard public comment on the advisability of imposing a productivity tax on forest lands in Montana in place of the

current ad valorem taxation. ROC Chairman Norman appointed a four-member subcommittee to look at forest taxation issues and to develop legislative proposals for consideration by the full committee. Subcommittee members are Sen. Bob Brown, Chairman; Sen. Dorothy Eck, Rep. Bob Hoffman, and Rep. Bob Rearn. The first meeting of the forest taxation subcommittee is scheduled for March 2 in Room 413 of the State Capitol.

Controversy Over Implementing HB 703...Public officials from Cascade and Jefferson counties expressed dissatisfaction with the Department of Revenue's proposed rules implementing the sales assessment ratio study under HB 703. These officials questioned the validity of the area designations used in the study as well as the methods used to calculate the percentage adjustments applied to appraised property values. The Revenue Oversight Committee directed the Department of Revenue to meet with officials from Cascade and Jefferson counties to attempt to resolve differences over the proposed rules. The Committee called for a special meeting on March 2 to consider suggested changes to the rules.

Department of Revenue Reports...Ken Morrison, Administrator of the Property Assessment Division, presented a progress report on the reappraisal cycle scheduled for completion by Dec. 31, 1992. Denis Adams, Director of the Department of Revenue, reported that a working group, consisting of the Department and representatives of the telephone industry, has been formed to develop rules on the imposition of the telephone license tax.

Other Reports...The Legislative Fiscal Analyst staff described the methods used to forecast interest earnings from the coal tax trust fund, the treasurer's fund, and the common school fund. Office of Public Instruction staff reviewed the implementation of the guaranteed tax base for public school funding under HB 28 (June 1989 Special Session). ROC staff compared the Committee's estimates of 1987 sales in retail trade and services with 1987 Bureau of Census reported sales. The committee also heard a report by the chairman of the House Taxation Committee on the fiscal chairs seminar sponsored by the National Conference of State Legislatures.

April 13 Meeting to be Rescheduled...The Revenue Oversight Committee will reschedule the April 13 (Good Friday) meeting at the March 2 special meeting.

COAL TAX OVERSIGHT SUBCOMMITTEE

Three Agencies to Report...The Coal Tax Oversight Subcommittee will hear reports on the use of coal severance tax funds during its meeting on Monday, April 2, from the Montana Arts Council, the Department of Natural Resources and Conservation, and the Office of Public Instruction. The Subcommittee will also review a draft bill requested by the Board of Investments to allow it to invest up to 25% of the permanent coal tax trust fund in the Montana economy and will complete plans for a tour of the coal producing area in June. The meeting will commence at 9 a.m. in Room 104.

COMPUTER SYSTEMS PLANNING COUNCIL

Coordination Meeting March 20...The Legislative Branch Computer Systems Planning Council's second meeting of the interim was held Feb. 27. The Council, composed of the five legislative agency directors and two delegates each from the House and Senate and a delegate from the department of administration, is responsible for development of a computer systems plan that will continue the coordination of computer application development for the Legislature and its agencies. Consensus was achieved on a proposal developed to cover the management of a legislative branch network and minimum hardware configurations that will support the Legislature. The next meeting was set for March 20 to finalize that proposal and to further discuss software standards and outline specific equipment needs. When the plan is completed, implementation will be at the discretion of the Legislative Administration Committees and the agencies. Members interested in details as they develop may contact the Executive Director of the Legislative Council or other Planning Council members.

LEGISLATIVE COUNCIL

Rural Developments to Be Topic...Among items on the agenda of the Legislative Council meeting Friday, March 9, will be consideration of a request by Rep. Ellison to charter a study to determine whether the state's laws are adequate to handle large-scale rural developments

of the type that has occurred in southern Park County. The Council plans to discuss with the Environmental Quality Council the propriety of the EQC undertaking the requested review. The Council will also conduct other administrative business.

LEGAL DIVISION

LEGAL MEMORANDUMS

- ¶ Status of Montana Abortion Statutes Concerning Minors
- ¶ Impeachment Procedures

INITIATIVE PROPOSALS

Pursuant to 13-27-202(2), MCA, copies of correspondence are available from the Secretary of State

- ¶ Require Enactment of Sales Tax by Initiative
- ¶ Initiatives Not Amendable
- ¶ Require Enactment of Sales Tax by Legislative Referendum

RESEARCH DIVISION

10-YEAR STAFFER DEPARTS...Lois Menzies, a staff researcher since 1980, is now the administrative officer with the Gambling Control Division of the Montana Department of Justice. During the last five Legislatures, Lois staffed the House Committee on State Administration and this interim was providing staff services to the Committee on State Employee Compensation and the Committee on Indian Affairs.

RESEARCH REPORTS

- ¶ I-105: From Clarification to Controversy
- ¶ Preliminary Evaluation of Sales Tax Data Base for Retail Trade and Services

LIBRARY

Computerization of database...The Legislative Council Library is embarking on a major automation project in which all materials are being entered into a computerized database, an "online catalog". This new technology will enable more efficient and complex searching, wider access, and streamlined procedures.

New Acquisitions...Materials recently received include works on economic conditions and economic development in the Pacific northwest and studies on educational accountability and on privatization of government services. See the Library's monthly acquisitions list or call 444-3064 for more information.



INTERIM CALENDAR

March 2, Joint Select Committee on Workers' Compensation, Room 104, 10 a.m.

March 2, EQC Solid Waste Task Force, Room 108

March 2, Revenue Oversight Committee, Room 325, 9 a.m.

March 8, Interim Subcommittee on Adult and Juvenile Detention,

Choteau Public Library, 1 p.m.; Great Falls Civic Center, 7:30 p.m.

March 9, Interim Subcommittee on Adult and Juvenile Detention, Great Falls Civic Center, 9 a.m.

March 9, Environmental Quality Council, Room 108, 8:30 a.m.

March 9, Legislative Council, Room 132

March 15, Environmental Quality Council Ground Water Data Task Force, Room 104

March 20, Legislative Branch Computer Systems Planning Council, Room 132

March 23, Joint Legislative Committee on Accountability and Quality in Education, Room 104

March 26, Legislative Audit Committee, Room 104

March 27, 10 a.m., Joint Interim Subcommittee on Marketing of

Motor Fuels, Room 104

April 2, Coal Tax Oversight Subcommittee, Room 104, 9 a.m.

April 5, Committee on State Employee Compensation, Room 104, 9 a.m.

April 6 and 7, Legislative Finance Committee, Room 104, 8:30 a.m.

April 9, Legislative Oversight Committee on School Funding, Room 104, 8:30 a.m.

April 12, Committee on Indian Affairs, Room 104

April 13, Revenue Oversight Committee, Room 104

May 10, Committee on State Employee Compensation

May 19, Joint Legislative Committee on Accountability and Quality in Education, Room 104

June 11 and 12, Coal Tax Oversight Subcommittee tour of the coal producing area of southeastern Montana (tentative)

June 14, Committee on Indian Affairs, Room 104

June 15, Revenue Oversight Committee, Room 104

June 28, Committee on State Employee Compensation

Aug. 23, Committee on Indian Affairs, Room 104

Aug. 30, Committee on State Employee Compensation

Sept. 7, Revenue Oversight Committee, Room 104

Sept. 7, Joint Legislative Committee on Accountability and Quality in Education, Room 108

Oct. 4, Committee on Employee Compensation

Oct. 6, Joint Legislative Committee on Accountability and Quality in Education, Room 104

Oct. 11, Committee on Indian Affairs, Room 104

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